A proviso, though, declared in legal effect that this should be true only when the laws of a state provide for docketing federal judgments in the same manner as judgments of its own courts might be docketed.[7]

It was for the purpose of meeting the requirements of this proviso that section 671a of the California Code of Civil Procedure was intended. It will be seen at a glance, however, why in the eyes of the court in the instant case, "it has failed so signally." For while judgments of our state courts operate as liens in the county of rendition instanter upon being docketed by the clerk, no act being required of the judgment creditor,[8] before a federal judgment may have a like effect the aforementioned Code section dictates the following procedure: A transcript of the judgment must first be filed and recorded with the county clerk, then filed with the county recorder and by him finally indexed and recorded. Again, while section 671a requires the same procedure of a federal judgment creditor in every county where he wishes the lien to attach, the much simpler condition of merely recording a transcript of the original docket with the county recorder is required of the creditor armed with a judgment of a state court.[9]

While to some the above differences may seem insignificant, and the position of the court in the principal case perhaps somewhat strained, we need but remember the extreme significance that a very few minutes may have in the competition of rival liens for priority, and remain silent as to the difference in resulting expense, to appreciate the position of the court as justified. The full protection of third persons, aimed at by the legislature in section 671a, is yet within its easy reach by an obliteration of these purposeless discrepancies.

*M. F.*

MORTGAGE: SUIT ON NOTE IN FOREIGN JURISDICTION AS PRECLUDING FORECLOSURE IN CALIFORNIA—It was very early decided that the payee of a note secured by a mortgage of property in this state waives his right to foreclose by reducing the note to judgment in a foreign jurisdiction, the foreclosure being deemed that second action prohibited by section 726 of the Code of Civil Procedure.[1] In *Brice v. Walker*,[2] we find that holding reiterated

---

[7] Supra, n. 5.

[8] Cal. Code Civ. Proc. § 671.

[9] Cal. Code Civ. Proc. § 674.

[1] Ould v. Stoddard (1880) 54 Cal. 613. The pertinent portion of Cal. Code Civ. Proc. § 726 is, "There can be but one action for the recovery of any debt, or the enforcement of any right secured by mortgage upon real or personal property, which action must be in accordance with the provisions of this chapter." The remainder of the section is occupied with the details of the foreclosure proceeding.

[2] (Nov. 19, 1920) 33 Cal. App. Dec. 561, 194 Pac. 721.

by way of dictum in language much broader and somewhat loose. It is obvious, then, that a mortgagee desiring to insist on his security, who finds himself in the position of the creditor in the instant case, must abandon his opportunity for personal service in the foreign jurisdiction, and foreclose here. As long, however, as the mortgagor remains outside of California, a deficiency judgment here is of course impossible.[3]

As a result of the original contract the mortgagee becomes entitled to both a foreclosure and a deficiency judgment if necessary. By virtue of what sound policy, then, has the court held that the mortgagor, by his own voluntary act of going into the foreign jurisdiction, may put the mortgagee in such a position that he must choose either a personal judgment at the sacrifice of his security,[4] or a realization on his security without a deficiency judgment — except by pursuing the mortgagor in the foreign jurisdiction?

Where the mortgagor, mortgagee and security, are all in this state, forcing the mortgagee to realize on his security and obtain a deficiency judgment in one action is based on the sound policy that it is unnecessary to force the court to hear, and the mortgagor to defend, several actions when with the same efficacy both may be achieved in the one suit.[5] But does this same policy dictate that only one action be allowed when the mortgagee is in a position where it is impossible to obtain both in one action?

The courts in construing section 726 have been astute to avoid

---

[3] Blumberg v. Birch (1893) 99 Cal. 416, 34 Pac. 102; Anderson v. Goff (1887) 72 Cal. 65, 13 Pac. 73.

[4] It might be argued, however, that in the ordinary case a creditor who has achieved a foreign judgment on a note secured by a local mortgage is under no disadvantage as a result of his inability to foreclose, for having reduced it to a California judgment, the mortgage res is amenable to execution. Even in case there should be an encumbrancer junior to the mortgage of the judgment creditor, it might still be suggested that there is no reason why the latter may not execute on the res, purchase at the sale, and, as a result, have title plus a paramount lien. The second action prohibited by § 726 would then be unnecessary. The debtor's equity of redemption has been cut off by the transfer of title; and to hold that equity would refuse to keep the first mortgage lien alive until satisfaction, because of the mortgagee's inability to foreclose, would be giving a substantive effect to a procedural requirement far in excess of that dictated by the rationale of § 726. It would be a necessary admission, however, that should the debtor place a homestead on the mortgaged property, or convey title to another, either before or after obtaining the foreign judgment, the mortgagee then, by virtue of that judgment, has in every sense of the word waived his security.

[5] That the rights and duties of the parties in such an action should be completely adjudicated in one action "—is an essential corollary of the fundamental and underlying concept of our reformed procedure; viz., avoiding a multiplicity of suits." Case Threshing Machine Co. v. Copren Bros. (1919) 30 Cal. App. Dec. 994, 184 Pac. 772. It is true also that general considerations of fairness enter here to "compel one who has taken a special lien to secure his debt to exhaust his security before having recourse to the general assets of the debtor." Merced Bank v. Casaccia (1894) 103 Cal. 641, 37 Pac. 648; Toby v. Oregon Pac. R. R. Co. (1897) 98 Cal. 490, 33 Pac. 550.

a dogmatic adherence to the letter of the statute in those cases where the mortgagee has found it impossible to achieve both a realization on the security and a deficiency in one action. Hence, in the case of a mortgage of foreign realty, the parties being in this state, a foreclosure in the forum at the situs of the res has been held not to preclude a separate action here for a deficiency.[6] The second and separate action for a deficiency has also been allowed here against a mortgagor when he returns to this state after having been absent during foreclosure proceedings, a deficiency judgment rendered at that time being invalid for lack of *in personam* jurisdiction.[7] Why, then, in the principal case, with the mortgagor in Arizona, and the mortgage res in California, where there existed the same impossibility of achieving both a realization on the security and a deficiency in the one action, as in the previous two cases, does the court indicate that the language rather than the policy of the statute will be followed?

*M. F.*

TAXATION: INHERITANCE TAX ACT: RECENT CALIFORNIA CASES—The frequency and incessancy of legislation on the inheritance tax act points strikingly to the confusion that still exists in that field of the law. The whole transfer tax law is still unshaped and as yet not definitively delimited. Of late a whole cluster of cases has been presented to the courts of this state and the inheritance tax law has been subjected to re-examination and more accurate definition. Some of these cases, which it is believed either settle some doubtful questions or fill existing gaps in the law, are here briefly reviewed.

*1. Transfer in Contemplation of Death.*

The general theory underlying the inheritance tax law is that it imposes a tax on all transfers of which death is the generating source.[1] Originally the tax was confined to succession by will or by intestate laws.[2] But it was early discovered that if the tax was restricted to purely testate and intestate succession it invited easy evasion by means of *inter vivos* gifts and agreements. The next logical step in the enforcement of the policy of taxing transfers of title effective at the moment of death was to tax certain transfers made during life. As a result the various state inheritance tax acts now almost universally include two classes of *inter vivos*

[6] Felton v. West (1894) 102 Cal. 266, 36 Pac. 676.

[7] "It is true the personal judgment docketed against the defendant was void, and also that under the code section cited (§ 726), there can be but one action for the recovery of any debt or the enforcement of any right secured by mortgage on real or personal property. It does not follow, however, that after the mortgage security is exhausted, leaving a deficiency which is no longer secured, no new action on the note can ever be maintained." Blumberg v. Birch, supra, n. 3.

[1] Knowlton v. Moore (1900) 178 U. S. 41, 44 L. Ed. 969, 20 Sup. Ct. Rep. 747.

[2] Gleason and Otis, Inheritance Taxation (2d ed.) p. 84.